**Department of Energy**

**Federal Labor Management Forum**

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| **PART I.** |  | **WHAT IS PRE-DECISIONAL INVOLVEMENT?** |

**Pre-decisional involvement** is a term which represents those **activities where employees through their elected exclusive representative are afforded by agency management the opportunity to shape decisions in the workplace which impact on the work the employees perform.** PDI is founded on the idea, both simple and profound, that we achieve more when we work together.[[1]](#footnote-1)

Pre-decisional involvement is the vehicle that provides for that "involvement." It is a process where unit employees who perform the daily tasks that collectively accomplish the mission of the agency have input into a decision-making process which traditionally has excluded them as stakeholders**. It does not expand the topics which are mandatorily negotiable under the Federal Service Labor-Management Relations Statute (Statute). It does, however, suggest that management should be willing to discuss all issues regardless of whether or not they are considered management rights, where practicable. Pre-decisional involvement does not waive management's statutory right to make decisions under section 7106 of the Statute, nor does it waive a labor organization's right to engage in bargaining prior to implementation to the extent required by the Statute**.

Rather, pre-decisional involvement is a “non-adversarial forum for managers, employees, and employees’ union representatives to discuss Government operations [that] will promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government.[[2]](#footnote-2)” In order to provide for employee input as stakeholders into the decision-making process, input may be solicited by forums/councils that “discuss workplace challenges and problems with labor and endeavor to develop solutions jointly..."[[3]](#footnote-3)

In order to be successful, it is critical that both parties to the relationship, labor and management:

* have a common understanding of what pre-decisional involvement is, as they themselves define it;
* share a mutual appreciation of why it is in their own best interest to engage in pre-decisional involvement;
* have similar expectations of the results they seek to obtain from pre-decisional involvement; and
* agree on what actions occur both during and after pre-decisional involvement has concluded.

The parties themselves must mutually agree on how they will deal with each other under this concept. When the parties work to establish a pre-decisional involvement process, the following principles of pre-decisional involvement should be fully explored and embraced:

1. When practicable, the process begins early when ideas are forming;
2. The parties have common expectations;
3. When practicable, information is freely shared throughout the process and there is an understanding on confidentiality of the information and the process when needed;
4. The participants utilize a problem solving approach founded on interest-based principles;
5. The participants adapt a team approach to their activities; and
6. The parties and the participants demonstrate a high degree of commitment to the process and to achieving their shared expectations.

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| **PART II.** |  | **THE BENEFITS OF ENGAGING IN PRE-DECISIONAL INVOLVEMENT - WHY DO IT?** |

**No party should engage in pre-decisional involvement unless that party believes that it is in its interest to do so**.

**Executive Order 13522 (and previous Executive Orders)** **do not precisely define the term “pre decisional involvement,” nor does the Executive Order establish at what stage of the decision-making process this "involvement" should occur or how this "involvement" should be accomplished, other than to say “to the fullest extent practicable.”** Rather, these matters are left for the parties, through their partnership councils and forums, to deliberate and decide. It is imperative that both parties realize that pre-decisional involvement is in their best interest, not just because the Executive Order mandates "involvement," at the appropriate levels of recognition[[4]](#footnote-4), in identifying problems and crafting solutions, but because it makes sense as a means to accomplish the agency's mission and is essential to transform agencies into organizations which continue to “deliver the highest quality services to the American people." “Management should discuss workplace challenges and problems with labor and endeavor to develop solutions jointly, rather than advise union representatives of predetermined solutions to problems and then engage in bargaining over the impact and implementation of the predetermined solutions.”[[5]](#footnote-5)

Management decisions on how work should be performed must be implemented; however, employees, through labor representatives often have valuable suggestions on: ways to be more cost effective, work better, achieve better and/or significant results for the resources invested, better provide value to customers and stakeholders, improve delivery of products and services on time, bring recognition to the agency for the services it provides, and foster a productive and constructive labor-management relationship. Pre-decisional involvement provides the means to tap into those employees' extensive hands-on experience. Thus, parties should recognize the potential benefits of a pre-decisional involvement process before they embark on the commitment of time and resources. Similarly, parties also should be aware of the potential risk of engaging in pre-decisional involvement when making these decisions. Listed below are some of those benefits and risks.

**Benefits of Pre-Decisional Involvement**

1. **Better decisions.** Employees who do the work have input into the decision-making process and are allowed to present and explore solutions that may have otherwise gone unnoticed.
2. **Faster and more consistent Departmental decisions.** When pre-decisional involvement and agreement occurs at the agency level, the need for (and time spent on) PDI and/or negotiations at each work site is obviated.
3. **Fuller implementation of decisions.** The decision is supported and employees responsible for carrying out directives and performing the work have an ownership stake in the success of those decisions since their interests have been acknowledged and satisfied.
4. **Greater support of the decision.** Decisions are better understood, both as to their origin and their intent, by those who are charged with implementing the decisions.
5. **More timely implementation.** The risk of delay in implementation caused by attempts to impede or delay implementation of perceived poor decisions is greatly reduced. Since the ideas have been more fully vetted, the risk of having missed something that delays implementation is significantly reduced.
6. **Any subsequent collective bargaining will be facilitated.** If there is a need to engage in collective bargaining under the Statute after the pre-decisional involvement process, it is highly likely that the parties have narrowed the issues, better understand the others' interests and preferred options and have built more trust in their dealings with each other which will only facilitate the collective bargaining process. At a minimum, time spent to understand the issue during initial bargaining is no longer needed.

**Risks of Pre-Decisional Involvement**

1. **Increased investment of time up front.** It normally takes longer to reach a decision when an additional entity (the union) and additional participants (employees) are part of the process formulating that decision. Although the decision may be better and implementation may be faster and fuller, the process leading to the decision may take longer.
2. **Increased administrative costs.** If the participants in the process are not located in the same city, for example, there may be travel costs.
3. **Collective bargaining under the Statute may still be necessary.** If the interests of the employees that the union represents are not satisfied to the extent necessary, the union may still request to engage in collective bargaining under the Statute. Absent agreement otherwise, the agency normally may not implement a change for that local’s bargaining unit employees until that collective bargaining has concluded.

Pre-decisional involvement is a means to better decisions which are more timely and fully implemented with the intended results. It is not an end in and of itself. Rather, it is a tool or method to achieve a goal which is in the interests of employees, labor organizations and agencies, for the delivery of the "highest quality services to the American people." The participants, in essence, act as a team of problem-solvers working together to find solutions rather than as adversarial negotiators.

**Department of Energy (DOE)** has been experimenting with pre decisional involvement via briefings and solicitation of input on an array of matters at various stages of the pre-decision making process. It is the DOE’s Federal Labor-Management Forum (LMF) goal to continue and expand the use of pre-decisional involvement to as many areas and levels within the agency as possible, with a desired end result of a process that results in better decisions, minimizes implementation delay due to statutorily mandated notification and impact and implementation negotiations when timely requested, and reduces the need for costly and time consuming negotiations, grievances and litigation on the matter in which PDI took place. **The parties understand that pre-decisional input may not be practicable on all things and may occur in a variety of methods (i.e. pre decisional briefings, solicitation of input, sharing of drafts with requests for comments/input, open discussions, etc.) and may occur at a variety of stages before a decision is made. and even after a decision has been made but implementation is still underway where there are additional choices to be made.**

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| **PART III** |  | **THE RELATIONSHIP BETWEEN PRE-DECISIONAL INVOLVEMENT AND THE STATUTORY DUTY TO BARGAIN** |

Prior to engaging in a pre-decisional involvement process, the parties should have a common understanding of the relationship between their pre-decisional involvement process and collective bargaining under the Statute. The following are alternatives which may occur after pre-decisional involvement has been completed:

1. **Recommendation accepted.** The union and agency decision-makers accept the option(s) presented by the team and there is no need for statutory bargaining (usually memorialized in a MOA/MOU).
2. **Recommendation modified and accepted.** The union and agency decision-makers modify the option(s) presented by the team and there is no need for statutory bargaining (usually memorialized in a MOA/MOU).
3. **Statutory bargaining required.** The union and agency decision-makers accept some of the options presented by the team and engage in statutory bargaining limited to the few areas where the team options were not accepted as presented or modified, or where additional I&I issues appear that were not dealt with during PDI.
   * Under this alternative, the parties may establish an expedited bargaining schedule since the interests already have been identified and explained and standards for the solution have been established.
   * Under this alternative, since the parties already have a full understanding of the issue, the interests and the extent to which the team proposed options meet and do not meet those interests, the parties may agree to post-implementation bargaining or to partial implementation on those matters where there is no disagreement.

Neither party waives its rights under the Statute by agreeing to engage in pre-decisional involvement. Successful pre-decisional involvement may obviate the need for other bargaining under the Statute, or may facilitate any bargaining that is required at the conclusion of the pre-decisional involvement process. The decision to engage in a pre-decisional involvement process does not disadvantage the agency or the union with respect to any statutory rights.

Both parties, however, fully recognize the possibility that it may indeed be necessary to engage in some statutory bargaining after pre-decisional involvement and prior to implementation of a change which otherwise triggers a duty to bargain under the Statute

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| **PART IV.** |  | **THE USE OF INTEREST-BASED PRINCIPLES AND TEAMS TO ACCOMPLISH PRE-DECISIONAL INVOLVEMENT** |

The following is a decisional process which the DOE Federal LMF will utilize as a vehicle for pre-decisional involvement. This model presented concerns situations where the agency wants pre-decisional involvement; however, unions may also initiate the exploration of whether pre-decisional involvement could be pursued on a particular issue. Thus, the same factors listed below for agency initiated offers to the union for pre-decisional involvement may also apply to union requests to engage in pre-decisional involvement over issues of concern to the union.

The model follows these basic steps:

**Step 1 - Deciding Whether to Engage in Pre-Decisional Bargaining**

**Step 2 - Deciding on the Relationship Between the Pre-Decisional Involvement Process and the Statutory Duty to Bargain**

**Step 3 - Structuring the Pre-Decisional Involvement Process**

**Step 4 - Recognizing Interests and Deciding on Standards**

**Step 5 - Creating the Work Team's Charge**

**Step 6 - The Work Team Decides How It Will Operate and Crafts Solutions to the Issues**

**Step 7 - The Decision is Made**

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|  |  | **THE AGENCY AND THE UNION DETERMINE IF THEY WILL ENGAGE IN PRE-DECISIONAL INVOLVEMENT OVER A PARTICULAR MATTER** |

***Factors the Department Considers when Deciding Whether it will Engage in a Pre-Decisional Involvement Process***

* *Whether pre-decisional involvement adds value to the decision-making process.*
* *Whether the issue lends itself to joint management and union concerns and/or opportunities.*
* *Whether the issue presents an opportunity for the agency and the union to join together to present a common strategy to deal with an external threat.*
* *Whether the agency already has taken a fixed position on the issue or whether the agency is willing to explore different solutions.*
* *Whether the issue lends itself to a short term or long term solution, or both.*
* *Whether the issue lends itself to a local or national solution.*

*For Department wide matters, if the Agency decides to move forward with PDI, the agency will contact the union via the Federal LMF and see if the union is interested in engaging in the pre-decisional involvement (PDI) process. The Department may also contact the Department’s local bargaining units via local labor operational offices.*

*In the transmission of the request to PDI from the Agency to the unions, the Department will strive to provide sufficient information to provide a clear synopsis of the matter the PDI is being requested on.*

*Examples of information that may be provided when proposing PDI:*

* *Any actions that the Department has already taken on seeking a solution to the issue.*
* *Any other matters that the agency already may have decided related to the issue.*
* *Whether the agency has an initial inclination as to the direction that the solution should take.*
* *Identification of the driving force behind the issue; i.e. why it is an issue in the first instance.*
* *The agency's initial perspective on how important this issue is to unit employees' and what conditions of employment and changes to how employees perform their work the Department anticipates may be impacted.*
* *The degree of confidentiality that the Department feels is required concerning the identification of the issue itself and of the information which is being provided to the union by the agency, along with the Department’s rationale.*
* *Any time frames that the agency already may have established for the decision-making and implementation process and whether or not there is the possibility to move any of those time frames.*
* *(For the Union) The anticipated time that representatives designated by the union will spend in the pre-decisional involvement process after receiving sufficient information from the Department to make that initial determination.*
* *The time frame in which the agency expects the union to respond to the invitation to engage in pre-decisional involvement.*
* *From whom the union may request a briefing or further documentation prior to deciding whether it will engage in pre-decisional involvement.*
* *The agency contact person on the issue.*

***Factors the Union Considers when Determining If it Will Participate  
in a Pre-Decisional Involvement Process***

* *The impact of the issues on unit employees' conditions of employment and how employees perform their work.*
* *Whether, and to what extent, the agency already has decided certain matters relating to the initiative.*
* *The availability of the union's resources and priority of the particular issue.*
* *The time frames that the agency or some outside entity already has established for the decision-making and implementation process.*
* *The extent to which the agency appears open to alternative solutions.*

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|  |  | **REPRESENTATIVES OF THE AGENCY AND THE UNION COME TO A COMMON UNDERSTANDING ON THE RELATIONSHIP BETWEEN THE PRE-DECISIONAL INVOLVEMENT PROCESS AND THE STATUTORY DUTY TO BARGAIN.** |

*The agency and union leadership should come to a common understanding about whether the parties will or will not engage in collective bargaining under the Statute upon the conclusion of the pre-decisional involvement process and the factors that will influence that determination. The parties also should agree on the consequences if the union chooses not to engage in pre-decisional involvement. For example, the agency may still opt at a later date to circulate a draft solution which may have been developed on the initiative without union involvement, and/or invite the union to a meeting to discuss developments that have occurred on the issue since the union was initially notified. The parties should acknowledge that whatever action is taken, the union retains its right to negotiate under the Statute and the agency retains its right under section 7106 of the Statute to make and implement decisions.*

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|  |  | **The Agency and the Union (and any Other Entities Involved in the Process) Come to a Common Understanding on the Structure of Their Pre-decisional Involvement Process.** |

***Identification of Who Determines the Structure  
of the Pre-Decisional Process***

*The Federal Labor-Management Forum members will decide the structure of the PDI process, with the Department advising when and how it is practicable to engage in PDI.*

*In this model, the LMF as a whole, or via its steering committee or via a subcommittee may select/designate a team charged with brainstorming solutions and analyzing the extent to which various options meet the interests and standards that have been identified by the Fed LMF. The LMF may modify the options presented by the team by resolution, and/or by the steering committee and/or forum head. The LMF may also request further efforts from the team consistent with the concerns of the LMF. The LMF head and/or Steering Committee will inform the team of the final LMF action and its rationale. Per the LMF Charter, all decisions will be made by consensus.*

**Additional Option- Final Decision-Making is Delegated to the Team**

*Another option is to delegate the decision-making authority to the team. Under this option, it is critical that the LMF ensure that the team members understand the institutional interests of the agency and the union. As discussed in the next step, in addition to the identification of interests by the Forum, the team members identify any independent interests they have which may not have been recognized by the Forum before they begin crafting a solution to the issue they have been delegated to resolve.*

**Additional Option - Other Entities May also Be Involved**

*This model also provides for the possibility that the agency and the union may agree that entities, other than management and the exclusive representative, have representation on the Forum and the team. For example, the parties may agree to allow representatives from mid-level management or the Union’s subject matter experts to serve on the LMF and the team.*

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|  |  | **METRICS – MEASURING OUR ACCOMPLISHMENTS** |

An important component of LMF activities is measuring its accomplishments. The Forum annual report and supporting metrics demonstrate how the Department is benefitting from the LMF; and LMF successes are the best guarantee of LMF continuation. The annual report must show how the forum is (or is not) 1) improving labor management relations; 2) improving employee productivity; and 3) improving employee quality of work life. With respect to each instance of PDI there is data to be collected:

1. What issue, event, proposal, etc., was the subject of pre-decisional involvement between the parties?
2. Was the matter a partial PDI or was it subject to pre-decisional involvement in its entirety? If partial, what was the extent of PDI?
3. Was the intent of improving Government service met, or did a union/management interest derail the process? Identify that interest.
4. Was an MOU/MOA reached with respect to subsequent I&I bargaining? Was one needed?
5. Did PDI on the matter reduce the need for and/or focus and frame any subsequent I&I bargaining?
6. Were all voices heard and considered?
7. Did this PDI improve labor management relations between the parties or result in a rift between the parties?
8. Is there a demonstrable or projected influence on employee productivity which flows from this PDI? What influence? To what extent was the influence positive or negative? How can it be measured?
9. Is there a recognizable or projected impact on employee quality of work life resulting from this PDI? What impact? To what extent was the impact positive or negative? How can it be measured?

**REFERENCES**

* 5 USC Chapter 71, Federal Service Labor-Management Relations Statute
* EO 13522, “Creating Labor-Management Forums to Improve Delivery of

Government Services” Memo from Secretary Ernest Moniz, April 27, 2014

* U.S. Department of Energy Charter, Department-wide Federal Labor Management Forum, approved by Secretary Moniz, April 27, 2014.
* Sources: <https://www.flra.gov/Guidance_pre-decisional%20involvement>

1. Remarks of OPM Director John Berry, 50th Anniversary of Executive Order 10988, AFL-CIO Offices, January 17, 2012 [↑](#footnote-ref-1)
2. Section 1, Policy of Executive Order 13522 signed by Barrack Obama December 9, 2009. [↑](#footnote-ref-2)
3. Section 1, Policy of Executive Order 13522 signed by Barrack Obama December 9, 2009. [↑](#footnote-ref-3)
4. Section 3, Implementation of Labor Management Forums throughout the Executive Branch, Subsection (a) (i), the head of each executive branch, will develop labor management forums “at the levels of recognition and the other appropriate level agreed to by labor and management…to help identify problems and propose solutions to better serve the public and agency missions;” [↑](#footnote-ref-4)
5. Section 1, Policy of Executive Order 13522 signed by Barrack Obama December 9, 2009. [↑](#footnote-ref-5)